UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT

In re:	Case No. 04-35051-WS
GARY FANNON,	Chapter 7
Debtor.	Hon. Walter Shapero
_____/	

OPINION GRANTING TRUSTEE'S MOTION TO COMPROMISE THE CLAIM OF DAVID CORN AGAINST THE ESTATE

This matter came before the Court on the trustee's motion to compromise the claim of David Corn ("Corn") against the Chapter 7 bankruptcy estate. Fannon Family Automotive, L.L.C. ("FFA") objects. The Court took the matter under advisement, and for the following reasons, the Court grants the trustee's motion.

Facts

On December 3, 2004, Gary Fannon ("Debtor") filed a Voluntary Petition for Relief pursuant to Chapter 7 of the Bankruptcy Code. Debtor was the sole member of FFA. FFA was listed as property of the bankruptcy estate pursuant to 11 U.S.C. § 541. According to the Trustee, Debtor's bankruptcy estate currently has approximately fifty-thousand dollars ($50,000) on hand to distribute to Mr. Fannon's creditors.

The Debtor's bankruptcy case was filed on December 3, 2004, but apparently the Debtor, as the sole principal of FFA, continued the used vehicle sales business of FFA for a short while thereafter. David Corn purchased one of FFA's automobiles during that period. Soon after the § 341 First Meeting of

Creditors on January 31, 2005, the Trustee (standing in the shoes of the Debtor as its sole member) took control of the remaining assets of FFA alleging it was the alter ego of Debtor among other things, and on February 18, 2005 the Trustee filed a motion to sell the assets of FFA, having concluded there was equity available to creditors of Debtor. The proceeds of that sale were used to first pay those who held liens on the sold assets and the remainder has become assets of this bankruptcy estate.

On April 21, 2005, following the filing of Debtor's Voluntary Petition for Relief, David Corn filed a five-count complaint in the Eastern District of Michigan, Southern Division, against FFA only. (Compl. ¶ , Case No., 05-CV-71578-AC, Apr. 21, 2005, Docket No. 1). The counts include: 1) Violation of the Federal Vehicle Cost Savings and Information Act; 2) Statutory Conversion; 3) Common Law Conversion; 4) Violation of the Michigan Consumer Protection Act; and 5) Misrepresentation. Essentially, Mr. Corn alleges that his $5,000.00 car purchase from FFA included an extended warranty, which he was not given, and that before executing the purchase agreement, FFA made material misrepresentations and failed to present Mr. Corn with a copy of title at the time of the sale. Initially, Debtor retained an attorney, and defended the action himself. The Trustee only learned of this lawsuit after receiving notice that a default judgment was entered in favor of Mr. Corn. The default judgment was later set aside, and the case is currently pending.

The Trustee allowed Debtor's attorney to continue to defend the lawsuit. However, at some point, Mr. Corn's attorney contacted the Trustee's counsel, and the parties discussed settling the matter for the sum of two-thousand dollars ($2,000), plus a confidentiality agreement, and no admission of liability statement on FFA's part. The Trustee wishes to settle the lawsuit on that basis and seeks Court approval to do so.

Parties' Arguments

The Trustee argues that the proposed compromise is in the best interest of the estate. Even though Corn's lawsuit only names FFA as a defendant, the Trustee argues that in order to preserve the value of Debtor's equity interest in FFA, it is in the best interest of the estate to settle the dispute for the a sum of two-thousand dollars ($2,000). The Trustee fears that FFA could be held liable for an amount in excess of five-thousand dollars ($5,000), and argues that any judgment awarded Mr. Corn against FFA, which might not be reduced because the debt arose post-petition, would have in substance to be satisfied with funds from the bankruptcy estate. The Trustee also notes the benefits of the proposed settlement, such as the noted withdrawal of the claim against FFA, a confidentiality agreement as part of the settlement, and no admission of liability on FFA's part.

FFA objects to the Trustee's motion, and essentially argues that Mr. Corn's complaint is without merit. However, FFA admitted at oral argument that Mr. Corn's claim that he did not receive a warranty is true, even though FFA places the blame on the Trustee.

FFA's counsel, John Peters (who has defended the lawsuit until now) also argues that if he is willing to defend Mr. Corn's lawsuit at no cost to the estate, the estate has no risk in allowing the case to proceed.

Analysis

This Opinion is limited to the issues raised and argued by the Trustee and FFA, and does not

address potentially dispositive issues which might have been raised by the parties.[1]

I. Standard for review of proposed compromise under Rule 9019

The law favors compromise, but any proposed compromise or settlement must be in the best interests of the estate. "In considering a proposed compromise, the bankruptcy court is charged with an affirmative obligation to apprise itself of the underlying facts and to make an independent judgment as to whether the compromise is fair and equitable. The court is not permitted to act as a mere rubber stamp or to rely on the trustee's word that the compromise is 'reasonable.'" Reynolds v. Commissioner, 861 F.2d 469, 473 (6th Cir. 1988).

The purpose of compromise agreements "is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims." In re A & C Properties, 784 F.2d 1377, 1380-81 (9th Cir. 1986) (quoted in unpublished 6th Cir. opinion Bard v. Sicherman (In re Bard), 2002 WL 31371984 (2002)).

A bankruptcy court should "form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

Courts have used the following factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved,

[1] For example, the Trustee's counsel briefly mentioned that he didn't believe that FFA had standing to object to the Trustee's motion to compromise. The Court need not decide whether FFA has standing to object to the Trustee's motion, because the Court is granting the Trustee's motion in spite of the objection.

and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); Bauer v. Commerce Union Bank, 859 F.2d 438, 441 (6th Cir. 1988) (court must weigh all conflicting interests); Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1929); In re Levine, 287 B.R. 683 (Bankr. E.D. Mich. 2002); and In re Dow Corning Corp., 198 B.R. 214, 221-22 (Bankr. E.D. Mich. 1996).

II. Applying the Factors

The first factor discussed in TMT Trailer is the probability of success in the litigation. TMT Trailer Ferry, Inc., 390 U.S. at 424. In this case, FFA argues that Mr. Corn's probability of success is very low. However, by FFA's own admission, Mr. Corn correctly states that he did not receive the warranty he says he paid for, contrary to Michigan law. The Court concludes Mr. Corn's probability of success in the state court action is low, but not so unlikely as would preclude at least some of the counts from surviving summary judgment motions. Therefore, this factor may weigh slightly in favor of denying the Trustee's Motion.

The next factor in TMT Trailer is the difficulties, if any, to be encountered in the matter of collection. Id. Generally, this is only a relevant factor when the estate is suing a third party in which circumstance one should take into account how and if any judgment can be satisfied, and the cost of doing so. This factor is not, however particularly relevant to this case.

The third factor discussed in TMT Trailer is the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it. Id. Mr. Corn's complaint contains five counts, alleging various and alternative theories of liability. Such a case has the potential of fairly complex litigation,

as the process of sorting out the stronger and weaker causes of action unfolds. The Trustee is proposing to settle the matter for a sum of only two-thousand dollars ($2,000). More importantly, even if the Trustee may not incur legal fees in defense of the claim, she will be required to spend her time in reviewing records and otherwise being involved in the case, thus delaying to its completion the closing of the estate.

Additionally, and in light of the fact that the Trustee took charge of the assets of FFA and liquidated them, and will be using them to pay creditors of the Debtor, the Debtor's argument that continuing the lawsuit at no cost to the Debtor, presents little or no risk to the Trustee and eliminates the rationale for paying $2,000.00 (or possibly anything) to settle the case, is not the whole story. The Trustee might be concerned about some theory that makes the Debtor liable in lawsuits like the Corn lawsuit based on an alter ego theory, a theory the Trustee herself asserted as the rationale for selling the assets of FFA, particularly so since the Corn vehicle was sold after the filing of the bankruptcy case and during a period when the Trustee had a theoretical right to control of those assets by way of her ownership of the Debtor's interest in FFA. Though she may not have become fully aware of the nature or extent of the business of FFA until the § 341 meeting. That is not to say the Trustee has any such potential liability or that such a claim is other than somewhat far fetched. In any event, the relatively modest $2,000.00 settlement to avoid even a low risk seems appropriate and within a Trustee's discretion - i.e., the Court cannot say that such a settlement is unreasonable.

Finally, the forth factor in TMT Trailer the Court must consider is the paramount interest of the creditors and a proper deference to their (the Trustee's) reasonable views in the premises. Id. Individual creditors in this case have not objected to the Trustee's proposed settlement. FFA is an asset of this bankruptcy estate and, thus, its affairs are primarily in the hand of the Trustee, not the Debtor. Settling this

matter at the indicated amount will allow the unsecured creditors to receive their disbursements sooner and takes any further risks to their distribution of FFA's equity value out of play. Given the required deference to the judgment of the Trustee, the intangibles of potential risk, delay, and time required to be spent by the Trustee's ongoing involvement in the matter, such justify a settlement at indicated figure. Therefore, the forth factor weighs in favor of granting the Trustee's Motion.

Conclusion

Weighing all the factors, Trustee's Motion to Compromise the Claim of David Corn against the Bankruptcy Estate for the sum of two-thousand dollars ($2,000) is granted. The Court will enter an appropriate Order.

Entered: May 20, 2006

/s/ Walter Shapero
Walter Shapero
United States Bankruptcy Judge